

APPEAL NO. 020890
FILED JUNE 3, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 24, 2002. The issue at the hearing was whether the claimant was entitled to supplemental income benefits (SIBs) for the fourth quarter. The hearing officer determined that the claimant was entitled to those benefits. On March 18, 2002, the hearing officer issued a Texas Workers' Compensation Commission (Commission) Order for Attorney's Fees (Order), covering services for the period from October 22, 2001, to February 17, 2002. The hearing officer approved 16 hours of the 21 hours requested at a rate of \$150.00 per hour for a total approval of \$2,400.00 of the \$4,200.00 requested. In his appeal, the appellant (attorney), one of the attorneys for the claimant, contends that the hearing officer abused his discretion in denying the five hours and in not awarding fees at the \$200.00 per hour rate requested. The appeal file contains no response from the respondent (carrier) or the respondent claimant.

DECISION

We reverse and remand for a hearing to determine whether the disapproved items were reasonable and necessary and whether the \$200.00 hourly rate is a reasonable fee.

We review attorney's fees cases under an abuse of discretion standard. Texas Workers' Compensation Commission Appeal No. 951196, decided August 28, 1995. The attorney includes with his appeal a copy of his Application for Attorney's Fees (TWCC-152), including his "Justification For Attorney Fee Request" and a chronological justification of the attorney's activities in connection with the items in the Order (internal time tracker). The file contains a copy of the Attorney Fee Processing System (AFPS) justification text. There is no log text from the hearing officer entered into the AFPS explaining his decisions to deny the five hours and to use the \$150.00 per hour attorney's fee rate as opposed to the \$200.00 rate requested.

As the attorney points out, attorney's fees paid by the carrier, where the claimant prevails on a quarter of SIBs, are not subject to the guidelines. Section 408.147(c); Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 152.1(f) (Rule 152.1(f)). The hearing officer apparently did not consider the justification text and provides no reasoned justification for disapproving the disputed items, merely using the designation "Ex Guideline/Unreasonabl." As such, we have no basis upon which to determine whether or not the hearing officer abused his discretion in disapproving those items. Texas Workers' Compensation Commission Appeal No. 960158, decided March 5, 1996; Texas Workers' Compensation Commission Appeal No. 970423, decided May 15, 1997. The justification text in the case at hand was filed with the TWCC-152 and together they provide considerable information as to the fees requested. In addition, the attorney cites Texas Workers' Compensation Commission Appeal No. 002523, decided December 12, 2000, to support his argument that the \$200.00 hourly rate is reasonable. In Appeal No. 002523, we held that attorney's

fees payable under Section 408.147(c) are not subject to the guidelines or to the 25% limitation of Section 408.221, and that the \$150.00-per-hour limit of Rule 152.4(d) does not apply to SIBs cases.

We reverse the Order as to the disapproved items and remand for the hearing officer to reconsider the five hours of requested fees he denied and to determine whether all or any portion of those fees are reasonable and necessary, and to determine whether the \$200.00 hourly rate is reasonable in regard to both those requested hours and the previously approved hours. The hearing officer should provide a reasoned justification for disallowing any item he disapproves. The hearing officer may, at his discretion, hold a hearing on remand or allow the parties to submit and respond to written materials.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Commission's Division of Hearings, pursuant to Section 410.202, as amended effective June 17, 2001, to exclude Saturdays, Sundays, and holidays listed in Section 662.003 of the Texas Government Code in the computation of time in which a request for appeal or a response must be filed.

The true corporate name of the insurance carrier is **INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA** and the name and address of its registered agent for service of process is

**CORPORATION SERVICES COMPANY
800 BRAZOS
SUITE 750
AUSTIN, TEXAS 78701.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Michael B. McShane
Appeals Judge